Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.

ATTORNEY FOR APPELLANT:

MICHAEL E. CAUDILL
Caudill and Associates
Indianapolis, Indiana

ATTORNEY FOR APPELLEE:

BARRY A. CHAMBERS
Marion County Department of Child Services
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

IN THE MATTER OF THE INVOLUNTARY TERMINATION OF THE PARENT-CHILD RELATIONSHIP OF S.A., Minor Child, and VALERIE AVERYHEART,	)	
VALERIE AVERYHEART,	)	
Appellant-Respondent,	)	
vs.	)	No. 49A02-0701-JV-75
MARION COUNTY DEPARTMENT OF CHILD SERVICES,	)	
Appellee-Petitioner, and	)	
CHILD ADVOCATES, INC.,	)	
Co-Appellee (Guardian Ad Litem).	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Victoria Ransberger, Judge Pro-Tempore
Cause No. 49D09-0605-JT-020403

September 20, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-respondent Valerie Averyheart appeals the trial court's order terminating her parental relationship with her minor daughter, S.A. Averyheart contends that the alleged policy of appellee-petitioner Marion County Department of Child Services (DCS) of removing a child from a parent's home based on the fact that the parent has other children who have been removed from her care is unconstitutional. She also argues that there is insufficient evidence supporting the termination of her parental rights. Finding that Averyheart has waived the argument regarding DCS's policy, that, in any event, there is no evidence in the record establishing that DCS follows such a policy, and that there is sufficient evidence supporting the termination, we affirm the judgment of the trial court.

FACTS

S.A. was born on March 5, 2005, to Averyheart and Lorenzo Harris.[1] On March 14, 2005, DCS filed a petition alleging S.A. to be a child in need of services (CHINS) after it learned that Averyheart had other children, living in Chicago, who had been removed from her care by the State of Illinois based on her inability to care for them because of her mental health and housing issues. Additionally, DCS alleged that Averyheart had moved to Indiana to prevent the State of Illinois from removing S.A. from her care. S.A. was removed from

[1] The trial court also terminated Harris's parental rights over S.A. Harris, who has never played a role in the child's life, does not appeal.

Averyheart's care at that time. On May 25, 2005, following a trial, S.A. was adjudicated a CHINS. On August 25, 2005, DCS put in place a participation decree requiring Averyheart to, among other things, successfully complete home-based counseling, complete a drug and alcohol assessment, and complete a parenting assessment and psychiatric evaluation.

Averyheart began receiving treatment for depression and bipolar disorder[2] at Midtown Mental Health in Indianapolis. Averyheart has also taken part in home-based counseling, though progress has been slow because of multiple hospitalizations. Specifically, she was hospitalized in the inpatient psychiatric unit of Wishard Health Services on June 11 through June 21, 2005, and September 17 through September 26, 2005, both times presenting with symptoms of depression and suicidal thoughts. The June 2005 hospitalization occurred after Averyheart was found in her underwear trying to get to the swimming pool of her apartment complex and was later found by the police walking in traffic in an apparent suicide attempt.

On May 18, 2006, DCS filed a petition to terminate the parental relationship between S.A. and Averyheart. On June 22, 2006, after eight months of doing well, Averyheart's physicians declared her to be in "[f]ull [r]emission" for her bipolar disorder. Appellant's App. p. 17. On July 17, 2006, she found herself in St. Francis Hospital, confused and disoriented. She was later arrested that same night and, after being released from jail, Averyheart was found wandering in the street in hospital slippers and without a purse. She stayed in Wishard Hospital from July 17 through July 21, 2006.

---

[2] Averyheart's bipolar disorder involves "chronic depressive and manic episodes. The episodes involve decreased energy and appetite and suicidal thoughts, and on the other hand she will have elated and increased

Between mid-July and August 2006, Averyheart experienced delusions, telling various health professionals that, among other things, she had won $311 million in the lottery, she had received a royalty from poems she had published, the president was dead and it was no longer safe, and she had written checks for $10,000 to the Beech Grove police department and her apartment complex for help they had given her. On August 24, 2006, she saw her therapist who found that she was manic, irrational, and suicidal. She was admitted for inpatient treatment and remained at the hospital until August 31, 2006.

Averyheart needs to take medication, monitor her lithium levels, and engage in individual therapy to deal with her bipolar disorder. Averyheart's psychiatrist testified that, following therapy, she is able to predict a manic episode—i.e., "pinpoint red flags"—seven or eight times out of ten. Appellant's App. p. 19.

Averyheart lives in a clean two-bedroom apartment that is an appropriate home for a child. She receives Social Security disability income in the amount of $623 per month, which the trial court found was sufficient income to support her. Averyheart has relatives who live in Indianapolis, but they cannot always be reached and she feels alone because no one else lives in Beech Grove.

S.A. has a physical disability, has had speech therapy, and has a mild case of cerebral palsy. She has been placed in the same foster home since she was six days old and DCS has approved a plan for S.A.'s foster mother to adopt her.

---

thought process[es] and grandiose illusions. The episodes last for four or more days." Appellant's App. p. 18.

Trial was held on the petition to terminate Averyheart's parental rights on September 26, November 9, and December 14, 2006. On January 4, 2007, the trial court terminated Averyheart's parental rights, entering findings of fact and conclusions of law. Among other things, the trial court made the following findings:

> 41. [Averyheart's relatives who live in Indianapolis] do not provide efficient support in times of need. Throughout the time the child has been a ward, there is no evidence that any of the relatives provided [Averyheart] with assistance during her manic episodes, while she was hospitalized following a manic episode, or when she was jailed during a manic episode.
>
> ***
>
> 43. . . . [T]here is no evidence of anyone Ms. Averyheart would call, or any plan of help, for her child, at the time a manic episode occurs in the future. Ms. Averyheart has expressed understanding at the need for an emergency safety plan for those times when a manic episode occurs. Ms. Averyheart has admitted that she does not have a safety plan for her child.
>
> ***
>
> 47. Ms. Averyheart's chief obstacle to reunifying with her child is her ongoing mental health problems which interfere with her ability to effectively meet the child's continuous needs and to keep her child safe. Ms. Averyheart is an intelligent and compassionate person who genuinely wants to be able to care for her child, but knows that this is not possible.
>
> ***
>
> 65. There is a substantial risk of harm to [S.A.] who is a toddler, not yet two years old, when a parent is influenced to act upon hallucinations.
>
> ***
>
> 69. . . . [E]ach manic episode is different and unpredictable and involves serious risk to her safety.

***

71. Even when Ms. Averyheart has felt a manic episode beginning, and she has complied with medical help, she still did not properly prepare.

***

74. Ms. Averyheart's condition is a chronic medical condition that will continue to require medications and case management.

75. It is clear that there is a pattern of times where, because of her mental health condition or other reasons, Ms. Averyheart has not followed through with commitments . . . . Such a pattern substantiates a clear concern about her ability to parent and keep from harm, a small child who has some special needs of her own, on a full time long term basis.

76. Over the course of more than one and one half years Ms. Averyheart did not or could not remove the obstacle that caused her child to be removed from her care. Although there is evidence she is receiving better medical care for her chronic Bi-Polar I condition, it is clear that manic and depressive episodes will continue to occur, and, there is no evidence that she has a way to protect the safety of her child when a manic episode occurs. This is the most difficult termination decision to reach when a parent has attempted to be compliant and for reasons relating to situations sometimes out of the parent's control, a termination order must be granted for the best interests of the child.

77. A manic episode would be frightening and disconcerting to a small child, and there is a high probability that the child would be in harm's way when her mother's mental capabilities are hampered, her mind is functioning irrationally, and her actions are beyond her control. This child cannot telephone for help, summon someone to assist or recognize the beginning symptoms before it is beyond the rational control of her mother.

***

89. There is a long term pattern where Ms. Averyheart could not take care of her needs and those of her other four children. More recently, with mental health services, she has experienced some short periods of time when she takes care of her own needs between

> manic episodes. However, even with professional help, there have been and will continue to be, times when she has manic episodes when her actions put her own safety at risk. She would not be able to provide responsible attention to a child's safety or needs.
>
> ***
>
> 91. . . . The record in this case sadly illustrates only one conclusion: that the conditions resulting in the removal cannot reasonably be expected to improve. It is clearly not in the child's best interest to wait additional years for the child to grow older and thus be able to anticipate or care for her mother during a mental health episode.

Appellant's App. p. 15-21. Averyheart now appeals.

DISCUSSION AND DECISION

I. Due Process

Averyheart first argues that DCS's "policy of removing a child from a parent's custody, based in part or in whole on that parent having another child previously removed violates the Federal and Indiana Constitutions." Appellant's Br. p. 9.

Averyheart neither objected, made an offer of proof, nor raised this issue before the trial court. Furthermore, although this argument is essentially an objection to the underlying CHINS action, Averyheart did not raise it at any time during the CHINS proceeding. Consequently, she has waived the argument on appeal. See McBride v. Monroe County Office of Family and Children, 798 N.E.2d 185, 194 n.4 (Ind. Ct. App. 2003) (holding that to preserve a due process claim for appeal, party is required to raise it during the termination proceeding); Adams v. Office of Family and Children, 659 N.E.2d 202, 206 (Ind. Ct. App. 1995) (holding that, having failed to raise an argument regarding the CHINS adjudication

during that proceeding, parents were collaterally estopped from relitigating the issue in the termination proceeding and on appeal).

Waiver notwithstanding, we observe that there is no evidence in the record that, in fact, such a DCS policy exists. To the contrary, the basis of the CHINS petition was Averyheart's "ongoing, unresolved mental health issues that adversely affect her ability to parent this child." Ex. 2. Consequently, there is no basis in the record on appeal from which we can conclude that DCS has a policy of removing children from their parents based solely on the fact that the parents have other children who have previously been removed from the home. Therefore, this argument fails.

II. Sufficiency of the Evidence

Averyheart next argues that there is insufficient evidence supporting the termination of her parental relationship with S.A. Specifically, she contends that DCS failed to prove that the conditions resulting in S.A.'s removal will not be remedied or that the continuation of the parent-child relationship poses a threat to S.A.'s well-being.

When reviewing termination of parental rights proceedings on appeal, we neither reweigh the evidence nor judge the credibility of witnesses. Instead, we consider only the evidence supporting the trial court's decision and the reasonable inferences that may be drawn therefrom. In deference to the trial court's unique position to assess the evidence, we set aside the judgment terminating a parent-child relationship only if it is clearly erroneous. If the evidence and inferences support the trial court's decision, we must affirm. In re L.S., 717 N.E.2d 204, 208 (Ind. Ct. App. 1999).

The involuntary termination of parental rights is the most extreme sanction that a court can impose, inasmuch as it severs all rights of a parent to his or her children. Therefore, termination is intended as a last resort, available only when all other reasonable efforts have failed. The purpose of terminating parental rights is not to punish the parents, but to protect their children. Thus, although parental rights are of a constitutional dimension, the law provides for the termination of these rights when the parents are unable or unwilling to meet their parental responsibilities. Id.

To effect the involuntary termination of a parent-child relationship, the State must present clear and convincing evidence establishing the following elements:

(A) one (1) of the following exists:

(i) the child has been removed from the parent for at least six (6) months under a dispositional decree;
(ii) a court has entered a finding under IC 31-34-21-5.6 that reasonable efforts for family preservation or reunification are not required, including a description of the court's finding, the date of the finding, and the manner in which the finding was made; or
(iii) after July 1, 1999, the child has been removed from the parent and has been under the supervision of a county office of family and children for at least fifteen (15) months of the most recent twenty-two (22) months;

(B) there is a reasonable probability that:

(i) the conditions that resulted in the child's removal or the reasons for placement outside the home of the parents will not be remedied; or
(ii) the continuation of the parent-child relationship poses a threat to the well-being of the child;

(C) termination is in the best interests of the child; and

(D) there is a satisfactory plan for the care and treatment of the child.

Ind. Code § 31-35-2-4(b)(2).

When determining whether certain conditions that led to the removal will be remedied, the trial court must evaluate a parent's habitual pattern of conduct to determine the probability of future negative behavior. In re D.J., 755 N.E.2d 679, 684 (Ind. Ct. App. 2001). And the trial court need not wait until a child is irreversibly harmed such that his or her physical, mental, and social development are permanently impaired before terminating the parent-child relationship. Id.

Here, DCS offered evidence that Averyheart suffers from a bipolar disorder, causing her to have depression and manic episodes. She was hospitalized numerous times during the period of time preceding the termination hearing. At one point Averyheart suffered from delusions, and at another point she was found wandering in the street in hospital slippers with no purse.

Although Averyheart has some family members in the Indianapolis area, she feels alone and does not have people from whom she can seek help during a manic episode. She has no emergency safety plan in place for S.A.'s care should she suffer another manic episode. Although Averyheart can, at times, predict that she is about to experience such an episode, she cannot do so reliably. And although she has endeavored to follow the advice of her therapist and psychiatrist, Averyheart's condition is chronic and unpredictable.[3] The family case manager testified that in her opinion, it would not be in S.A.'s interest to give

[3] Averyheart insists that "there is every possibility" that her condition can again enter into remission. Appellant's Br. p. 15. We note, however, that within a month of the last time she was declared to be "in remission," she was hospitalized, disoriented, and delusional.

Averyheart more time to learn how to cope with her mental illness: "I think this is going to be a long time chronic issue that unfortunately it will put [S.A.] in a dangerous situation and due to that I don't believe giving any more time would [be] appropriate." Tr. p. 137.

We appreciate the sincerity and diligence of Averyheart's efforts to learn how to cope with her bipolar disorder and the fallout from her manic episodes. But a child needs a safe, stable, and permanent environment, and the evidence in the record establishes that, perhaps due to factors beyond Averyheart's control, she is unable to provide such an environment for S.A. Averyheart's argument that the trial court ignored evidence of her improvements is a request that we reweigh the evidence, which we cannot do. Given the evidence in the record of Averyheart's hospitalizations, delusions, manic episodes, and lack of a support system, we find that the trial court was not clearly erroneous in concluding that it is in S.A.'s best interest to terminate Averyheart's parental rights.

The judgment of the trial court is affirmed.

BAILEY, J., and VAIDIK, J., concur.